BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between SUPERIOR HOUSING AUTHORITY EMPLOYEES LOCAL 244-A, AFSCME, AFL-CIO and SUPERIOR HOUSING AUTHORITY	Case 29 No. 53829 A-5452 (Toni Charboneau Grievance)

Appearances:

Mr. James E. Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Hendricks, Knudson, Gee & Hayden, Attorneys at Law, by Mr. Kenneth A. Knudson, appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to a request by Superior Housing Authority Employees Local 244-A, AFSCME, AFL-CIO, herein the Union, and the subsequent concurrence by Superior Housing Authority, herein the Employer or the Authority, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission on April 8, 1996, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on September 25 and 26, 1996, at Superior, Wisconsin. The hearing was transcribed. The parties completed their briefing schedule on January 8, 1997.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUE:

Did the Employer discharge the Grievant for just cause?

FACTUAL BACKGROUND:

Toni Charboneau, hereinafter the Grievant, was employed with the Authority from July 15, 1985, until her termination on November 6, 1995. During this period of time, the Grievant held a number of positions with the Authority. She started as a Cashier Clerk which

included Receptionist duties. Later, she held the position of Leasing and Occupancy Specialist. She also worked in the positions of Collections Specialist and Credit Control Inventory Specialist. Her duties basically have centered around the collection of money for the Authority, processing evictions, maintaining a central filing system and working on an inventory system.

During her employment, the Grievant was an active member of the Union. She served as trustee, as member of the executive board of the Local and as a member of the Union's bargaining committee. She also served as an active steward for a number of years. In this capacity, she was active in the processing of grievances and in the resolution of disputed issues with management.

In 1993, the Grievant complained to Diane Meysman-Martin, Personnel Administrator, about an overload of work and duties, and about "not being able to get certain tasks completed." Meysman-Martin attempted to work with the Grievant to address her concerns over workload only to get into "memo wars" with the Grievant over the subject.

On March 29, 1994, Meysman-Martin did a job evaluation of the Grievant. In said evaluation, Meysman-Martin gave the Grievant excellent point scores for job quality, knowledge, reliability and availability. She noted that productivity "was a bit of a problem," and asked the Grievant "to use more of her own judgment." Regarding "Interpersonal Relationships," Meysman-Martin wrote "Needs to keep relationships in office more harmonious. Has difficulty with staff relationships and is often referred to as a 'troublemaker.'" In discussing these comments with the Grievant, Meysman-Martin attempted:

> to let her know that some of the behaviors she was exhibiting in the workplace was (sic) creating problems in the workplace, specifically remarks, gossip, confrontational-type behaviors with other employees, and I wanted to let her know that she needed to attempt to keep the relationships in the office more harmonious and to try to improve on that.

Meysman-Martin later crossed out the word "troublemaker" on the evaluation after objections from the Grievant and Union President Mark Halverson. She did this in order to get the Grievant "back on track" on her job and to eliminate conflict over the evaluation which had included the Grievant attaching a two-page written response to her evaluation.

On May 16, 1994, Meysman-Martin wrote the Grievant a memo regarding excessive phone calls and her inability to get her work done on a timely basis.

On August 25, 1994, Meysman-Martin suspended the Grievant for two days for personal attacks on fellow employes. Meysman-Martin informed the Grievant that she had no business listening in on someone else's conversation and "had no right to go into Karen's office, uninvited, and verbally attack her using profanity," especially in front of another employe who was frightened and intimidated by the Grievant's behavior.

In the fall of 1994, Meysman-Martin spoke to the Grievant on several occasions about inappropriately getting involved in other employes' jobs.

On or about April, 1995, Meysman-Martin wrote a memo to the Grievant regarding some inspections she had done improperly. After failing to get what she believed was an adequate response to her memo from the Grievant, Meysman-Martin wrote to the Employer's attorney asking what she could do next. Meysman-Martin wrote: "I'm trying to get to the bottom of this, she's refusing to cooperate with me, I feel she's being insubordinate at this point."

During this same period of time, Meysman-Martin was getting complaints from other staff relative to the Grievant's inappropriate discussions with clients and to her critiquing other employes' work and "taking things and reviewing them and then confronting the employee with what was wrong with it." Meysman-Martin added: "I had a regular flow to my office of 'can't you make this stop.'"

By letter dated May 17, 1995, the Authority suspended the Grievant for two weeks for her "involvement in duplicating keys to the Peter Rich Center and giving them to Cheryl Downs."

Meysman-Martin did an evaluation of the Grievant on August 3, 1995, in which she tried to share some of her concerns with the Grievant. As in her 1994 evaluation, the Grievant scored high in a number of categories and was again ranked as a "very good" employe. However, regarding "Adherence to Policy," Meysman-Martin wrote: "Needs to exercise proper decorum - has displayed improper behavior to other staff and participated in a dishonest act." Regarding "Interpersonal Relationships" she wrote "Needs improvement working with co-workers and supervisors." Finally, regarding "Judgment" she stated: "Lacks judgment as related to disregard of SHA security and inter office conflict with co-workers - also as demonstrated in inspections conducted." As for areas of needed improvement, Meysman-Martin wrote "inter-personal relationships . . . exercise of proper judgment both in regard to internal conflict. . . ."

By memo dated August 30, 1995, Meysman-Martin advised the Grievant as follows:

> I have been advised by various members of the staff on 8/29, that you raised concerns you had regarding their job performance. While I am pleased that you are concerned that the housing authority operate at the highest levels of efficiency, I am, however, concerned that staff may be confused over where lines of authority are drawn, since you are clearly not in a supervisory capacity.
>
> In the future if you have any question on why or how something is being done, you are to refer those concerns directly to me. I will

then follow through as I see appropriate.

On September 6, 1995, Meysman-Martin spoke to the Grievant about how resolutions were signed that came before the Authority's Board of Directors. During the course of this conversation, the Grievant informed Meysman-Martin that she had a problem with her, but that "it would be taken care of in the next couple of weeks." Meysman-Martin felt that she was being threatened despite her efforts to explain things to the Grievant.

On October 12, 1995, the Grievant wrote a memo to James A. Sigfrids, Executive Director for the Authority, regarding her attempt to correct the August 23, 1995 Board meeting minutes. At the Board meeting the Grievant made some comments "relative to other employees' performance and it upset those employees that had been cited tremendously." The Grievant felt the aforesaid minutes inaccurately reflected her comments.

On or about October 17, 1995, Meysman-Martin discovered that the Grievant had "again" improperly logged into another employe's directory.

Between July 1, 1995, and November, 1995, Meysman-Martin continued to get complaints on a regular basis from co-employes concerning their relationship with the Grievant. Around this same time, Meysman-Martin considered further disciplinary proceedings against the Grievant, up to and including termination. However, she was advised by the Authority's attorney "to hold off at that point because there were other things that may be forthcoming."

Also during 1995, there were a number of complaints filed against the Authority involving charges of sexual harassment, discrimination based on sex and age and hostile environment. These charges were made by present and past employes including the Grievant. At no time material herein did any employe prevail on any complaint against the Authority.

The Grievant also made complaints about the Authority's practices to the regional U.S. Housing and Urban Development Office in Milwaukee as well as federal, state and local elected officials. The Superior newspaper carried stories on allegations of "unfair practices, misallocation of funds and harassment" against the Authority on October 13, 1995.

As a result of the aforesaid complaints against the Authority, the newspaper articles and the "stress" these complaints caused in the work place, Sigfrids went to the Authority's Board and requested an investigation of the charges. The Board then hired the Human Resources Consulting Department of McGladrey & Pullen, LLP to conduct an independent investigation of the sexual harassment, discrimination and hostile environment claims.

Ken W. Buck and Karen S. Andresen conducted the investigation on behalf of McGladrey & Pullen. They started out by "trying to determine if indeed sexual harassment existed either in a quid pro quo fashion or in a hostile environment fashion." As they got into the investigation, they "found that the environment seemed hostile but not in a sexual manner."

The aforesaid investigation took place in October, 1995. The following consulting techniques were used in the investigation: data collection, including a review of the Union contract, management's policies, procedures and memos to employes, personnel files, etc.; observation, including a tour of the facility, and observation of interpersonal interactions between employes and management; and personal interviews of one-third of the total employes of the Authority, including male and female employes selected on a random basis.

Following its investigation, McGladrey & Pullen issued a report which included the following in the "Management Summary":

> To date there is no evidence of sexual harassment.
>
> In regard to hostile environment, we found very little that could be classified as hostile from management downward with the exception of some memos that could be construed as overbearing or more severe in tone than necessary for the infraction. However, there is a fear factor present--not stemming from management.
>
> There is a severe communication problem throughout the building. A practice of memo writing rather than verbal communication has evolved between employees and management.
>
> There seems to be a particular problem because one employee is causing at least eight other employees high anxiety, stress, and fear for their own safety and privacy.
>
> Previously, the board has been viewed by employees to be uninvolved in personnel problems.
>
> There is a need to adopt a formal harassment policy.
>
> The current conflict between employees must be resolved or the Superior Housing Authority will experience a significant turnover of valuable employees.

The Report also made the following relevant recommendations:

1. Develop an employee handbook consisting of policies and procedures. This handbook would supplement the Union contract and include a specific sexual harassment and hostile environment policy.

. . .

3. Explore the possibility of eliminating the position of credit control/inventory specialist and giving those duties to others in a restructuring.

4. Terminate the employment of Toni Charboneau or offer her an opportunity to resign. Toni's response may well be to begin a lawsuit. As harmful as that might be, her continued presence causes conflict, stress, and fear for other employees and does not seem to benefit the Superior Housing Authority in any way. Her continued presence would be devastating in the long run. If possible, the board should solicit Union support for this termination. Given the right treatment, she might welcome the "out" of resignation.

5. Scale back communication by memo from Diane Meysman-Martin to employees. If there is a problem that affects the group, a meeting should be held and everyone told about the problems. Allow employee input into offering solutions. If there are problems with individuals, talk to them directly, record with a note to the file and if the problem is corrected, remove the note. In cases requiring disciplinary action, follow the policies in place. It is our impression that many minor, small issues have escalated to the grievance level unnecessarily.

In conclusion the Report noted:

> The Superior Housing Authority has unresolved personnel problems which need to be addressed. Some need immediate attention, others can be prioritized.

Though we are generally impressed with the management staff, Jim and Diane need to make some changes in style to deal with the current problems. First, the employee that most other employees agree is causing the majority of the problems should leave the Authority. The reason needs to be communicated briefly to the other employees and the SHA staff needs to get back to business.

Jim needs to lead his staff and be more hands-on. He and Diane need to set the tone and set it in a positive way.

Diane needs to do a better job of deciding which battles to fight and determine what is important to the functioning and work accomplishment of the SHA and what is not. Many petty issues have been elevated to the grievance level and beyond. These activities are counter-productive and huge time-wasters.

The excessive communication by memo needs to stop. Also excessive write-ups, discipline and suspensions seem to be meted out, but nothing much happens. This leads to a threatening atmosphere that should not be necessary in a professional and healthy work environment.

Our investigation points up several negatives at SHA. Yet there are many positive aspects working in their favor. We believe that this organization is capable of dealing effectively with the challenges facing them.

Thereafter, by letter dated November 6, 1995, the Authority terminated the Grievant as noted above. In said letter, Sigfrids stated "based upon its recent internal investigation" the Authority has determined that it is in its "best interest" to terminate your employment.

PERTINENT CONTRACTUAL PROVISION:

ARTICLE 9 - DISCIPLINARY ACTION

Section 1. The Union recognizes the authority of the Employer to initiate disciplinary action against employees, provided such discipline is for just cause.

Section 2. The Employer recognizes the principal of

progressive discipline when applicable to the nature of the misconduct giving rise to the disciplinary action.

Section 3. An employee shall be entitled to appeal any disciplinary action through the grievance and arbitration procedure.

Section 4. If any disciplinary action is taken against an employee, both the employee and the Union will receive copies of this disciplinary action.

Section 5. Disciplinary action statements and records shall be removed from employee records after two years, provided that the employee has no further violations during that time frame. Such disciplinary action forms shall not be removed until such time as the employee has two consecutive years of no violations.

UNION'S POSITION:

In its brief, the Union basically argues that the Employer terminated the Grievant as an act of retribution for her Union activism and for a newspaper article critical of the management of the Authority that appeared in the local newspaper which it blamed on the Grievant.

The Union also argues that the Grievant "has an intelligent and expressive personality" which was misinterpreted as being aggressive and hostile to certain less senior employes. The Union states that the Employer should have taken steps to smooth over such personality conflicts.

The Union further argues that the Employer used a two-prong attack to terminate the Grievant. First, as noted above, the Employer relied on feelings of fear and hostility against the Grievant by new employes. Secondly, the Employer then relied upon a flawed study by McGladrey & Pullen which focused on these hostile feelings of new employes to build a case for termination. The Union feels this study was flawed primarily because it did not interview former employes to determine their perspective on conditions in the Administrative Department and because it interviewed only one employe of the Maintenance Department. (Emphasis supplied) The Union also feels that the study's sole purpose was to provide a basis for terminating the Grievant and that it was conducted with this purpose in mind.

In support of the above, the Union argues that those employes expressing "fears and suspicions" were mainly young and impressionable employes who happened to be hired by the Personnel Director into their current jobs and who happened to be personally loyal to her. The Union believes these employes' impressions of the Grievant should not be credited in view of the positive testimony from Administrative Department employe Bill Reynolds, former Administrative

Department employes and Maintenance Department employes on behalf of the Grievant. The Union also believes that the record does not support the allegations of the aforesaid critics of the Grievant that she rummaged through anyone's files, that she threatened anyone, that she joked about going "postal," that she ever committed a single act of violence or that she was responsible for the stress in the work place.

In addition, the Union argues that the Employer failed to properly investigate the charges against the Grievant. In this regard, the Union maintains, as noted above, that the Employer should have tried to work to resolve the fears and personality conflicts between employes in the Administrative Department instead of using these fears to terminate an employe who was viewed as a Union activist and perceived as a "thorn in the side of management." More importantly, according to the Union, was the failure of the Employer to interview, question or discover the Grievant's side of the story before terminating her.

Finally, the Union cites the standards for determining whether just cause exists for termination detailed in "Remedies in Arbitration" by Hill and Sinicropi, Second Edition, BNA, pp. 139-140 (1991) as well as the Daugherty standards in support of its position. In particular, the Union opines that the Employer did not satisfy the seven questions provided by Daugherty because (1) the Employer did not discuss its concerns with the Grievant and did not warn her that she could be terminated for her actions, (2) the Employer's concerns were not related to the orderly, efficient and safe operation of its business and were not communicated and enforced with respect to all concerned, (3) the Employer did not make a satisfactory effort to discover whether the Grievant violated its rules, (4) the Employer did not conduct a fair investigation, (5) the Employer surrendered its managerial responsibility to decide whether the Grievant was guilty as charged to a "seriously flawed second party investigation," (6) the Employer did not treat the Grievant in the same manner as other employes, and finally, (7) the degree of discipline imposed by the Employer on the Grievant was not reasonably related to the seriousness of her proven offense. (Emphasis supplied)

In its reply brief, the Union makes the following arguments. One, the problem was not with the Grievant's work performance, but with the management style of the Personnel Director. Two, management failed to respond to concerns by some employes in the Administrative Office regarding the Grievant instead letting them fester and grow leading to the Grievant's discharge. Three, the Employer made several false allegations in its brief concerning the Grievant such as she logged into other employe's computers and chastised other employes over job performance. Four, the Grievant was not the employe making charges concerning sexual harassment. Five, the Employer's expert testimony was fundamentally flawed since it was based on a "woefully deficient study." Six, the Employer has no persuasive evidence that the physical ailments of some employes were directly attributable to the Grievant. Seven, the hostile environment was created by management, not the Grievant, Eight, there was no violence or threats concerning violence in the Authority's work place.

Based on all of the above, the Union requests that the Arbitrator sustain the grievance, reinstate the Grievant and make her whole for all lost wages and benefits due to the Employer's action.

EMPLOYER'S POSITION:

The Employer initially contends that the record facts provide "an overwhelming basis in support of the termination of Toni Charboneau for just cause." In this regard, the Employer provides the following examples of the Grievant's deteriorating working relationship with her fellow employes and the overall quality of her work with the Authority: her evaluation of other employes before the Authority Board; her logging into other employes' computers without reason to be in their files; her going through other employes' offices and interfering with completion of their work; her chastising other employes over job performance when she was not in a supervisory capacity; her prior discipline for engaging in confrontations and unprofessional behavior with other employes; and her prior discipline for breaching the security of the Authority relative to providing an ex-employe with a key so that the knowledge of a lost key would be hidden from the proper officials and for involving co-employes in said deception. The Employer adds that the Grievant was responsible for misplaced complaints of a hostile environment against Meysman-Martin, for unfounded allegations of sexual harassment and for elevating stress levels at the Authority's work place which necessitated the hiring of an independent firm to perform an evaluation of the situation. The Employer concludes by noting that the independent evaluation of the Authority correctly found that the Grievant was responsible for causing the hostile work environment at the Authority; that it properly recommended her termination based on business necessity and that the testimony of the study's evaluators further supported the just cause basis for the Employer's decision to terminate the Grievant's employment. The Employer also points out that co-employe testimony supported the Authority's action.

In its reply brief, the Employer makes the following points. One, there are absolutely no facts to support the Union's allegation that the termination was a result of retribution due to the Grievant's activities as a Union steward; to the contrary, the record indicates that the Grievant could not handle Meysman-Martin's promotion to management and became confrontational with her as a result. Two, the Grievant's "expressive personality" was correctly interpreted as being aggressive and hostile. In addition, management tried unsuccessfully to get the Grievant to improve her interpersonal relationships in the work place. Three, the newspaper article simply served as a catalyst for hiring an independent firm to determine whether there was any validity to the charges of harassment and hostile environment and was not used as an excuse to terminate the Grievant. Finally, the Employer argues that the study was not flawed because the "so-called fears and suspicions" of certain female employes were real, because the Employer had an obligation to treat their concerns seriously, that their testimony proved the Grievant was guilty of the conduct complained of, that the so-called "burning testimony" from the Maintenance Department workers supposedly ignored on purpose by the study team actually supports the Employer's position and that the former employes' testimony did not really add anything of value to the Grievant's case. Finally, the Employer rejects the standards relied upon by the Union for determining whether or not just cause existed for terminating the Grievant but argues that the Employer met said standards anyway.

Based on all of the above and the entire record, the Employer requests that the Arbitrator deny the grievance and dismiss the matter.

DISCUSSION:

The parties stipulated that there are no procedural issues and that the instant dispute is properly before the Arbitrator for a decision on its merits.

At issue is whether the Employer had just cause to discharge the Grievant.

The Employer argues that there was just cause for the Grievant's discharge while the Union takes the opposite position.

The parties do not agree with respect to a standard to be applied herein. The Union, in its brief, applies the "seven tests" standard. 1/ The Union also cites Hill and Sinicropi, supra, as another standard for the Arbitrator to follow in determining whether there was just cause for terminating the Grievant's employment. The Employer, on the other hand, rejects the relevance of said standards, but argues that it satisfied the standards when it discharged the Grievant. The Employer maintains that there was a sufficient factual basis in support of the Grievant's termination for just cause.

In the absence of an agreement by the parties as to a standard to be applied herein, the undersigned will apply his own standard. This Arbitrator believes there are two basic and fundamental questions in any case involving just cause. One is whether the employe is guilty of the actions complained of, which the Employer has the duty herein of so proving by a clear and satisfactory preponderance of the evidence. If the answer to the first question is affirmative, the second basic question is whether the punishment is contractually appropriate given the offense.

Applying the above standard to the instant case, the Arbitrator first turns his attention to the question of whether the Grievant is guilty of the actions complained of.

The Employer terminated the Grievant based on the results of the study conducted by McGladrey & Pullen. That study found "very little that could be classified as hostile from management downward . . . However, there is a fear factor present - not stemming from management." The study also found that "one employee is causing at least eight other employees high anxiety, stress, and fear for their own safety and privacy." The study further concluded that "The current conflict between employees must be resolved or the Superior Housing Authority will experience a significant turnover of valuable employees." The study recommended:

1/ This is an analytical framework devised by the late Carroll R. Daugherty, a Professor of Labor Economics and Labor Relations at Northwestern University and well-established arbitrator. It was his attempt at defining "just cause." His approach has its critics and its shortcomings.

> Terminate the employment of Toni Charboneau or offer her an opportunity to resign. Toni's response may well be to begin a lawsuit. As harmful as that might be, her continued presence causes conflict, stress, and fear for other employees and does not seem to benefit the Superior Housing Authority in any way. Her continued presence would be devastating in the long run. If possible, the board should solicit Union support for this termination. Given the right treatment, she might welcome the "out" of resignation.

Contrary to the Union's assertion, the record supports a finding that the study's conclusions and recommendations were accurate. In particular, the Arbitrator finds that Kenneth Buck, evaluator for McGladrey & Pullen, testified credibly that it was his professional opinion that a hostile work environment existed at the Authority and that it was caused by the Grievant. 2/ It was also Buck's opinion that failure to deal with the situation caused by the Grievant would cause increased turnover in employes, 3/ and that it was his expert opinion that the only way to alleviate the hostile environment and the harmful stress to other employes and to create a safe work place was to terminate the Grievant. 4/

Karen Andresen, a second evaluator from McGladrey & Pullen, also expanded on the conclusions reached by the study. She noted that the issues were not about management, people were afraid, suffering stress and physical symptoms as a result of the interoffice hostility created by the Grievant. 5/

Several witnesses testified credibly on behalf of the Employer that the Grievant's so-called "expressive personality" was interpreted as being aggressive and hostile. Karen Boodry and Heather Tanula observed first hand the Grievant's behavior when she swore and yelled at Boodry in the office. 6/ Carissa Glinski testified that the Grievant's behavior patterns were intimidating, 7/ that she would become physically agitated to the point she showed red veins and

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2/ Tr. Vol. I at 96-97.

3/ Supra, at 99.

4/ Supra, at 104 and 106.

5/ Supra, at 156-157.

6/ Supra, at 274-275 and 303-304.

7/ Tr. Vol. II at 343 and 345.

would shake, 8/ and that people were under a great deal of stress and became physically ill as a result of the Grievant's actions. 9/ Other employes in the administrative building also described their observations of intimidating behavior. 10/

The Union attacks the credibility of the aforesaid witnesses' testimony arguing that, for the most part, those expressing "fears and suspicions" were the young and impressionable employes who happened to be hired by the Personnel Director into their current jobs and felt personal loyalty to the Personnel Director. However, a Union activist (Carissa Glinski) who was formerly a Union steward and currently is vice president of the Union corroborated most of the Employer's allegations. 11/ One witness, Mary Rosencrans, was visibly shaken on the stand and almost crying when she described the Grievant's intimidating behavior and threatening action. 12/ Another witness, Heather Tanula, was shaken and extremely nervous 13/ when testifying about the Grievant's behavior toward other employes and describing the duress that employes felt who were under attack by the Grievant. 14/ Another witness, Cindee Naughton, who testified that the Grievant did a good job of training her, 15/ nevertheless added that she agreed with the recommendation to terminate the Grievant "because there was a lot of tension and hostility during that time period" resulting from the Grievant's actions. 16/ Contrary to the Union's assertions, the Arbitrator can find no persuasive evidence in the record attacking the credibility of these witnesses. To the contrary, these witnesses, representing a cross section of the Employer's work force, including a Union activist, a Union member, current and former members of the bargaining unit as well as management personnel, all persuasively told the same story. In addition, the Employer provided testimony from Diane Meysman-Martin, unrebutted by the Union, that complaints of this nature continued on a regular basis during the last few years of the Grievant's employment despite efforts by the Employer to help the Grievant improve her interpersonal

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8/ Supra, at 352.

9/ Supra, at 350.

10/ Supra, at 386-387, 395-397; Employer Exhibit No. 7.

11/ Supra, at 340-380.

12/ Supra, at 396-398.

13/ Tr. Vol. I at 270-271.

14/ Supra, at 274.

15/ Tr. Vol. II at 383.

16/ Supra, at 382.

skills. 17/

Based on all of the above, the Arbitrator finds that the Employer has proven that the Grievant is guilty of the actions complained of.

In reaching this conclusion, the Arbitrator credits the testimony of the Employer's witnesses over the Union's witnesses regarding the Grievant's disruptive influence in the work place. In particular, the Arbitrator finds the Employer's witnesses more persuasive based on their demeanor while testifying, the manner in which they testified, the character of their testimony, their attitude toward the situation that they were testifying about, and the consistency of their testimony. More importantly, their testimony regarding the Grievant's improper behavior toward fellow employes is not inconsistent with the testimony of Union witnesses. In this regard, the Arbitrator points out that while the Union's witnesses had lots of good things to say about the Grievant's performance in the work place they also confirmed that severe problems existed in the work place and that the Grievant was at the center of the problems. For example, Bill Reynolds, a Union steward, was aware that other people had problems with the Grievant and tried unsuccessfully to work things out between the Grievant and co-employes. 18/ Mark Halverson, former Union President, acknowledged that personality conflicts between the Grievant and co-workers were at the root of the problem. 19/ Connie Halverson, a former employe, agreed that there might be some indirect fear of the Grievant but attributed that to employes' being intimidated by the Grievant's knowledge and experience. 20/ Halverson's understanding that employes feared the Grievant because of her positive qualities seems faulty, in the opinion of the Arbitrator, especially since Halverson also testified that the Grievant got along fairly well with everybody and that she didn't see too many conflicts. 21/ Other Union witnesses like Mandy Prill and John Letsos testified that there was lots of conflict and turmoil between employes over the past few years, 22/ but blamed "hostile management" for these problems. 23/

Based on the foregoing and the record evidence, the Arbitrator is of the opinion that Union

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17/ Tr. Vol. I at 189-190, 193, 203, 210-211, 220, 222-225, 229-230 and 235.

18/ Tr. Vol. II at 537.

19/ Supra, at 568.

20/ Supra, at 586.

21/ Supra, at 584.

22/ Supra, at 590 and 637.

23/ Supra, at 637.

witness Bill Reynolds described the atmosphere at the Authority accurately when he testified:

> It was like there was (sic) two separate camps in the administration office, which kind of extended over to the maintenance department. People from one camp only talked to other people if it was a necessary work-related item, where within their own camp they would . . . discuss things about arts . . . just casual conversations . . . rather than . . . just business. . . . From what I saw that there was no friendly conversations . . . just mainly business conversations. 24/

Based on all of the above, it is clear, in the Arbitrator's opinion, that the Grievant was nice, friendly and supportive of one group of employes, but for other employes she was a disruptive force. The Employer had a legitimate factual basis upon which to discipline her. 25/

A question remains as to whether the penalty imposed was contractually appropriate. A review of this question may be undertaken within the context of the issues raised by the Union in arguing against discharge.

The Union initially argues that the Employer retaliated against the Grievant because of her Union activities. However, the Union offered no persuasive evidence in support of same. To the contrary, the record is replete with examples of how the Employer was not biased against the Grievant because of her Union activities. The Authority's Executive Director had a long history of successful labor-management relations both prior to and during his tenure at the Authority. 26/ Diane Meysman-Martin was formerly President of the Union, 27/ and although her relationship with the Grievant changed when she became management, 28/ and she attempted to explain this change in the nature of their relationship with the Grievant, 29/ there is no evidence in the record that she took action against the Grievant because of her Union affiliation or activities. Nor is there any persuasive evidence in the record that the independent evaluators from McGladrey & Pullen were biased against the Grievant for her Union activities. Finally, many of the witnesses who

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24/ Supra, at 543.

25/ Employer Exhibit No. 3. See also generally the testimony of James Sigfrids, Kenneth Buck, Karen Andresen and Diane Meysman-Martin. Tr. Vol. I.

26/ Employer Exhibit No. 1 and Tr. Vol. I at 22-23, 47.

27/ Tr. Vol. II at 637.

28/ Tr. Vol. I at 188.

29/ Id.

testified against the Grievant were either Union members or members of the bargaining unit. Perhaps the most convincing witness against the Grievant was the Union's own Vice President. She testified that she "never" felt any discrimination from management against her because of her Union involvement. 30/ She also testified that things were "tense" in the office because of the Grievant, 31/ that the Grievant was the source of problems in the work place, 32/ that the Grievant caused the "hostile environment" at the Authority, 33/ that other employes were intimidated by the Grievant, 34/ and suffered harm as a result of the Grievant's actions, 35/ and finally, that the Authority was justified in terminating the Grievant for the well-being of the agency. 36/ Based on all of the foregoing, the Arbitrator rejects the allegation by the Union that the Employer discharged the Grievant for her Union activities.

The Union also attacks the objectivity of the McGladrey & Pullen study based on a number of factors. However, contrary to the Union's assertion, even if the McGladrey & Pullen evaluators had interviewed former employes and more current members of the Maintenance Department the outcome would not have been different. As noted above, the Grievant's problems were not with everyone, just a large number of employes that she couldn't or didn't want to get along with. In addition, there is no persuasive evidence that the study was commissioned to give management a reason to terminate the Grievant. To the contrary, management wanted an investigation primarily to clear the air and deal with the charges of sexual harassment and hostile work environment. 37/ Even the evaluators who started out their investigation thinking that they were investigating charges against both management and employes regarding harassment and hostile work place 38/ were surprised when people said that most of the problems stemmed from one person, the Grievant. 39/ In addition, despite

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30/ Tr. Vol. II at 341.

31/ Supra, at 342-343.

32/ Supra, at 345 and 348.

33/ Supra, at 350.

34/ Id.

35/ Id.

36/ Supra, at 359.

37/ Tr. Vol. I at 42.

38/ Supra, at 72.

39/ Supra, at 156.

their negative findings, the decision to recommend the Grievant's termination was a difficult and unusual one. 40/ Finally, there is no evidence that said evaluators were told to find reason to terminate the Grievant because of the newspaper article that appeared on October 13, 1995.

The Union also argues that the Employer failed to properly investigate the dispute by failing to work to resolve the fears and personality conflicts between employes in the Administrative Department, and by failing to get the Grievant's side of the story. However, McGladrey & Pullen interviewed the Grievant as part of their investigation although the Grievant did not cooperate with the evaluators particularly well. 41/ The Employer also worked unsuccessfully with the Grievant to help her to improve her interpersonal skills.

The Union further argues that the Employer did not satisfy the Daugherty standards when it discharged the Grievant. The record, however, does not support a finding regarding same. To the contrary, the record indicates that there were numerous informal discussions between management and the Grievant over the Grievant's conflicts with other employes. In addition, the Employer warned the Grievant in her annual employe evaluations that she needed to improve her relations with co-workers. The record also indicates that the Employer informed the Grievant through these discussions and evaluations what was expected of her in her interactions with fellow employes and attempted unsuccessfully to assist her in addressing these concerns. The record further indicates that not only did the Employer make its own effort to discover whether the Grievant was guilty of the actions complained of, 42/ but it hired an outside consultant to do an independent investigation of the situation. Not only was this a fair investigation, but together with the information the Employer had independent of the investigation, it provided a sufficient basis upon which to terminate the Grievant. The decision to terminate the Grievant was then made by the Employer, not the consultant, as suggested by the Union.

In addition, there is no persuasive evidence in the record that the Employer treated the Grievant any different than any other employe who was similarly situated. In this regard, the Arbitrator points out that the Grievant is the only employe ever suspended by the Authority for her failure to get along with fellow employes. Finally, as noted above, the Employer has proven that the Grievant is guilty of the actions complained of.

The Union adds that the Grievant was an excellent and proficient employe. This is true except for the past few years where her work performance deteriorated. The Union also complains that management failed to manage. That is true to some degree. 43/ However, that

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40/ Supra, at 40-41.

41/ Supra, at 94-95.

42/ Employer Exhibit No. 7

43/ Employer Exhibit No. 3.

does not excuse the Grievant's behavior or her failure to respond constructively to management's efforts to help her. The Union further challenges several allegations contained in the Employer's brief. However, since they are immaterial to the outcome of this case, the Arbitrator finds it unnecessary to make any determinations regarding same.

The Arbitrator cannot find anything persuasive in the record to mitigate the penalty imposed.

Based on all of the above and foregoing, the record as a whole and the arguments of the parties, the Arbitrator finds that the answer to the issue stipulated to by the parties is YES, the Employer discharged the Grievant for just cause, and it is my

AWARD

That the grievance of Toni Charboneau is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 20th day of March, 1997.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator